follow that not only is the disciplinary committe competent to decide that issue, it is under a statutory duty to do so. In the present case, there was in reality no issue going to the root of the said proceedings in the sense that the committee had no authority to hear the complaint. If the committee had identified the correct nature of the 'jurisdictional' point, it would have dealt with it, and, in accordance with its own opinion, dismissed the complaint in limine.

The committee has given its opinion on the types of misconduct which if committed by a Singapore solicitor practising in a foreign country would subject him to disciplinary action under the various provisions of the Act. We do not propose to express our views on these matters and they must remain as an opinion of the disciplinary committee. However, in the case before us, we have to decide whether the complaint against JL comes within the ambit of the section under which it was laid, viz s 80(2)(b) of the Act. It should be recalled that JL was a Singapore solicitor as well as a Brunei solicitor and the alleged misconduct was committed by him in Brunei. The committee's opinion that misconduct committed outside Singapore did not come within the Act was expressed in terms which did not make a distinction between the capacities in which JL was alleged to have misconducted himself. We think that such a distinction is vital as the first limb of s 80(2)(b) makes that distinction. Under that limb, a Singapore solicitor is liable to disciplinary action if he 'is guilty of fraudulent or grossly improper misconduct in the discharge of his professional duty'. These words are intended to and can only refer to the discharge of his professional duty in his capacity as an advocate and solicitor of the Supreme Court of Singapore and not in some other capacity. In their context, no other construction is possible. It follows that the locus of the misconduct is irrelevant so long as it is committed by a Singapore solicitor in discharge of his duty as a Singapore solicitor. The corollary of this is that where a Singapore solicitor is also qualified to practise as a solicitor in some other country, then any misconduct by him in the discharge of his professional duty as a foreign solicitor does not fall within the first limb of s 80(2)(b) *even if the misconduct is committed in Singapore*. However, it does not follow from this principle that the misconduct of such a solicitor does not subject him to disciplinary action under some other provision of the Act.

As far as the charge against JL was concerned, it was that he had dishonestly withheld professional fees from his employers, a Brunei firm of advocates and solicitors, whilst in the employment of that firm and was thereby guilty of a grossly improper act as an advocate and solicitor within the meaning of s 80(2)(b) of the Act. That, in our view, could only be a reference to his conduct as an employee of the firm, ie in the discharge of his professional duty as a member of that firm and not as a Singapore solicitor. We would further observe that the charge did not include the vital words 'in the discharge of his professional duty'. If those words had been included in the charge, the self-contradiction in the charge would have become apparent. Accordingly, the complaint could and should have been dismissed on that ground.

We also express no opinion on whether if what JL had done was done in the discharge of his professional duty in his capacity as a Singapore solicitor that would have subjected him to the second limb of s 80(2)(b) which reads:

> guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as in the opinion of the court amounts to improper conduct or practice as an advocate and solicitor.

That raises a true issue as to the extra-territorial jurisdiction of the Supreme Court to discipline a Singapore solicitor for misconduct committed outside Singapore. The issue arising from the charge did not. It was one of statutory construction.

For the above reasons, we find that the committee erred in law in deciding (1) that it was not competent to decide the issue of its jurisdiction and (2) that on the charge or the facts there was cause of sufficient gravity for disciplinary action against JL. The application for an order absolute is accordingly dismissed with no order as to costs.

Application dismissed.

Solicitors: *Low Yeap & Co.*

Reported by *Terence Tan Bian Chye*

Re Anrite Aviation Co Pte Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 1143 OF 1989
KARTHIGESU JC
29 AUGUST 1990

Companies and Corporations — Winding-up — Members' voluntary winding-up converted to creditors' winding-up — Liquidators' notice summoning meeting of creditors — Whether meeting of creditors must in fact be held — Companies Act (Cap 50, 1985 Ed), s 295(1) & (2)

Words and Phrases — 'Summon' — Companies Act (Cap 50, 1985 Ed), s 295(1)

Words and Phrases — 'Convened' — Companies Act (Cap 50, 1985 Ed), s 295(5)

Anrite Aviation ('the company') was a wholly-owned subsidiary of Pan Electric. It resolved to wind itself up voluntarily and liquidators were appointed. Following the Comptroller of Income Tax assessing the company to tax for over $1m, the

liquidators were of the opinion that the company was not able to pay or provide for the payment of its debts in full. They sent out notices to all creditors of the company under s 295(1) of the Companies Act (Cap 50, 1985 Ed) ('the Act'). No creditors attended. The meeting was adjourned to a later date ('the second meeting') but no fresh notices were sent to inform creditors of this meeting. Again, no creditors attended. The liquidators then sought a determination from the court that the winding-up of the company in voluntary liquidation proceed as if it were a creditors' voluntary winding-up and for other consequential orders. The two issues before the court were (i) whether the notice summoning the meeting of creditors complies with the requirements of s 295(1) read with s 295(2) and (ii) if so, whether the legislative intent to be gathered from a reading of the section as a whole is that a meeting of creditors must in fact be held in order to satisfy the legislative intent.

Held, allowing the application:

(1) Under s 295(1) of the Act, no particular form of notice summoning a creditors' meeting is required. All that is required is that the notice must draw attention to the creditors' right of appointing their own liquidator and reading the whole of the notice as a business document, it is clear that this has been done.

(2) The words 'summon', 'convened' and 'held' are used in s 295 in their natural and ordinary meanings. The legislative intent is that once a proper notice complying in every particular with sub-s (1) read with sub-s (2) is properly served on the creditors, the provisions of the section are complied with whether or not a meeting is in fact held.

(3) The failure of the liquidators to send out fresh notices for the second meeting was a procedural irregularity and is not likely to have caused any substantial injustice.

Legislation referred to

Companies Act (Cap 50, 1985 Ed) ss 290(1)(b), 295(1), (2), (3), (4), (5), 328(1)(f)
Companies Winding-Up Rules 1969 r 123(1)

Case referred to

1 *Choppington Collieries Ltd* v *Johnson & Ors* [1944] 1 All ER 762 (refd)

Young Chee Foong (*Lee Soo Chye* with him) for the applicant.

Cur Adv Vult

Karthigesu JC: Anrite Aviation Co Pte Ltd ('the company') was a wholly-owned subsidiary of Pan Electric Industries Ltd. On 25 January 1985, an extraordinary general meeting of the company was deemed to be held pursuant to s 147(6) of the Companies Act (Cap 185, 1970 Ed) (now s 179(6) of the Companies Act (Cap 50, 1985 Ed) and the following resolutions passed:

1 Winding-up

That Anrite Aviation Company Private Limited be wound up voluntarily pursuant to s 254(1)(b) of the Companies Act (Cap 185, 1970 Ed) (now s 290(1)(b) of the Companies Act (Cap 50, 1985 Ed)).

2 Appointment of Liquidators

That Messrs Seet Keong Huat and Edwin Khoo Tian Soo of Seet Khoo & Co, 593 Havelock Road #02-01 Teck Huat Chambers, Singapore 0316 be appointed liquidators jointly and severally to conduct the winding-up and that their remuneration be fixed on the usual scale of their professional charges for the work involved.

3 Distribution in specie

That the liquidators, Messrs Seet Keong Huat and Edwin Khoo Tian Soo may distribute, divide among the contributories in specie or kind the whole or any part of the assets of the company and vest the same in trustees upon such trusts for the benefit of the contributories or any of them as the liquidators, Messrs Seet Keong Huat and Edwin Khoo Tian Soo, think fit and if thought expedient any such division may be otherwise than in accordance with the legal rights of the contributories.

4 Indemnify liquidators

That the liquidators, Messrs Seet Keong Huat and Edwin Khoo Tian Soo be indemnified by the company against all costs, charges, losses, expenses and liabilities incurred or sustained by them in the execution and discharge of their duties in relation thereto.

Accordingly as from 25 January 1985 the company was in members' voluntary liquidation.

The liquidators having accepted their appointment and in the process of ascertaining the full extent of the company's liabilities sought income tax clearance from the Inland Revenue Department. The Inland Revenue Department requested for audited accounts. The liquidators forwarded the audited accounts of the company as at 31 December 1984 and as at 25 January 1985 to the department in August 1986.

The Comptroller of Income Tax queried certain items and requested for further information and evidence on expenses charged by related companies. Thereafter the Comptroller assessed the company to tax in the sum of $1,040,156 having disallowed expenses in the region of about $5m. The company objected to the assessment but the documents and information furnished relating to the inter-company transactions were not accepted by the Comptroller. The liquidators have been advised by the holding company, Pan Electric Industries Ltd, that they are unable to provide further documents and accordingly the company is unable to pursue the objections further. In the event the company's income tax liability is as originally assessed in the sum of $1,040,156 in respect of which the Comptroller declared and filed a proof of debt against the company on 15 April 1988, claiming priority under s 328(1)(f) of the Companies Act (Cap 50, 1985 Ed).

Pending income tax clearance no dividends had been paid by the liquidators to the unsecured creditors of the company.

In view of the company's income tax liability of $1,040,156 the liquidators were of the opinion that the company will not be able to pay or provide for the payment of its debts in full. Accordingly the liquidators proposed to act under s 295(1) of the Companies Act (Cap 50, 1985

Ed) ('the Act'). They sent out notices to all the creditors of the company calling for a creditors' meeting. The notices were sent to the creditors at their last known addresses. The notice reads as follows:

> In the matter of the Companies Act (Cap 50) and in the matter of Anrite Aviation Company Pte Ltd (in members' voluntary liquidation)
>
> Notice is hereby given pursuant to s 295 of the Companies Act (Cap 50) that a general meeting of the creditors of the abovenamed company will be held at 9 Penang Road #12-00 Supreme House, Singapore 0923 on 10 November 1989 at 3pm for the following purposes:
>
> Agenda
>
> 1 To receive an account of the liquidators' acts and dealings and of the conduct of the winding-up for the period from 25 January 1985 to 30 September 1989.
> 2 To receive a statement of the company's affairs incorporating a statement of the assets and liabilities at 30 September 1989.
> 3 To appoint a liquidator for the purpose of winding up the affairs of the company as a creditors' voluntary liquidation, pursuant to the rights of the creditors under s 295(2) of the Companies Act (Cap 50).
> 4 To appoint a committee of inspection, consisting of not less than two persons and not more than five persons.
> 5 Any other business.
>
> Any creditor wishing to attend and vote at this meeting must submit particulars of their claims by lodging Form 77 at the office of Coopers & Lybrand at 9 Penang Road #12-00 Supreme House, Singapore 0923 on or before 12 noon on 6 November 1989.
>
> Secured creditors (unless they surrender their security) must give particulars of their security, the date it was received, and its value if they wish to vote at the meeting.
>
> The liquidators' account for the period from 25 January 1985 to 30 September 1989 has been made up and may be inspected at 9 Penang Road #12-00, Supreme House, Singapore 0923 on Mondays to Fridays between the hours of 9am to 5pm.
>
> A creditor may appoint a proxy to attend and vote instead of him and that proxy need not himself be a creditor. Forms of General and Special Proxy (Form 58 and Form 59) are enclosed which, if intended to be used, must be duly completed and lodged at the office of Coopers & Lybrand not later than 48 hours before the meeting.
>
> Edwin Khoo Tian Soo
> Liquidator
> c/o Seet Khoo & Co
> 9 Penang Road #12-00
> Supreme House
> Singapore 0923
>
> Dated this 27th day of October 1989.

In anticipation of the creditors' meeting which was scheduled to be held on 10 November 1989, the liquidators had prepared for presentation at the meeting an account of their acts and dealings and of the conduct of the winding-up for the period from 25 January 1985 to 30 September 1989 together with a summary of all receipts and payments for the same period and notes on the current position of staff and salary, investments, assets and creditors/customers' deposits/accruals, referred to in para 2 of the agenda and the statement of the company's affairs incorporating a statement of the assets and liabilities as at 30 September 1989 referred to in para 3 of the agenda. These were duly exhibited to the court.

Although the liquidators affirm in the affidavit filed in support of this application that as the requisite quorum was not present on 10 November 1989, the meeting was adjourned to 17 November 1989 when again no quorum was present, I was informed by counsel that not one creditor turned up on either day at the appointed time and place. As to what number constitutes a quorum, I was again informed by counsel that the Act does not provide for a quorum. However, liquidators normally take three to be a quorum relying on r 123(1) of the Companies Winding-Up Rules 1969 and the liquidators in this case would have, I was so informed by counsel, considered the meeting as having been held had there been present three creditors or their proxies.

Counsel has also confirmed to me that when the meeting was adjourned from 10 to 17 November 1989 no fresh notice was sent to the creditors informing them that the meeting convened for 10 November was not held for a lack of quorum and that the meeting had been adjourned to 17 November 1989 and would be held at 3pm on that day at the same place, that is to say at 9 Penang Road #12-00.

It was in these circumstances that the liquidators sought a determination from the court that the winding-up of the company (in members' voluntary liquidation) proceed as if the winding-up were a creditors' voluntary winding-up and for other consequential orders. Having heard counsel who presented me with a very full argument I made the orders set out below and agreed to give my written reasons at a later date which I now do.

The orders I made were:

(a) that the winding-up of Anrite Aviation Co Pte Ltd proceed as from the date of this order (1 August 1990) as if the winding-up is a creditors' voluntary winding-up;
(b) that the appointment of Seet Keong Huat and Edwin Khoo Tian Soo as joint and several liquidators of the company be continued for the purpose of the above winding-up without prejudice to their position in the event of their taking steps to effect their resignation and release;
(c) that the remuneration of the said liquidators for the purpose of the above winding-up be as fixed on the usual scale of their professional charges for the work involved;
(d) that the title of the present action be amended to show that the above-named company is in creditors' voluntary liquidation;

(e) that the costs of this application be payable out of the assets of the company in priority to all other claims; and

(f) that there be general liberty to apply.

Section 295 of the Act reads as follows:

> (1) If the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under section 293, he shall forthwith summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company and the notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (2).
>
> (2) The creditors may, at the meeting summoned under subsection (1), appoint some other person to be the liquidator for the purpose of winding up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.
>
> (3) If the creditors appoint some other person under subsection (2), the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.
>
> (4) Within 7 days after a meeting has been held pursuant to subsection (1), the liquidator or if some other person has been appointed by the creditors to be the liquidator, the person so appointed shall lodge with the Registrar and with the Official Receiver a notice in the prescribed form and if default is made in complying with this subsection the liquidator or the person so appointed, as the case requires, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $800 and also to a default penalty.
>
> (5) Where the liquidator has convened a meeting under subsection (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the company, the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up; but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under subsection (1) was held less than 3 months before the end of that year.

The raison d'etre for this provision is simple enough to discern. The section provides for the procedure that is to be followed when a company which is being voluntarily wound up pursuant to a special resolution duly resolved under s 290(1)(b) of the Act and which of necessity implies that the company is able to pay or provide for the payment of its debts in full (a members' voluntary winding-up) is in the opinion of the duly appointed liquidator no longer able to do so, and thus the liquidation of the company can no longer proceed as a members' voluntary winding-up. If the liquidation of the company is to proceed, then the section provides that the liquidation shall proceed 'as if the winding up were a creditors' voluntary winding up' provided that the requirements of the section are complied with.

The requirements laid down by the section are the following:

(1) to forthwith summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company (s 295(1) of the Act);

(2) that the notice summoning the meeting shall draw attention of the creditors to the right conferred upon them by sub-s (2) that is to say that the creditors may appoint some other person to be the liquidator for the purpose of winding up the affairs and distributing the assets of the company instead of the liquidator appointed by the company (s 295(1) of the Act);

(3) as a corollary to (2) above the creditors would have a right to appoint a committee of inspection or if one is not appointed to fix the remuneration of the liquidator appointed by the creditors (ss 298(1) and 297(3) of the Act).

Subsections (3), (4) and (5) of s 295 of the Act have no relevance for present purposes. Suffice it to say that the combined effect of sub-ss (3) and (5) is that whether or not the creditors appoint a liquidator instead of the liquidator appointed by the company, on compliance with the provisions of sub-s (1), 'the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up'. Subsection (4) is a penal provision for the failure to submit a return following a meeting of creditors and the second part of sub-s (5) deals with the necessity to summon an annual meeting of creditors at the end of the first year from the commencement of the winding-up if the meeting held under sub-s (1) was held less than three months before the end of that year.

From the facts set out at the beginning of this judgment, it is plainly evident that following the Comptroller of Income Tax assessing the company to tax in the sum of $1,040,156 the liquidators were of the opinion that the company was not able to pay or provide for the payment of its debts in full. The liquidators then invoked the provisions of s 295 of the Act to convert the members' voluntary winding-up into a creditors' winding-up.

In order to decide whether the liquidators have succeeded in doing so, two questions need to be addressed, namely, whether the notice summoning the meeting of creditors complies with the requirements of sub-s (1) of s 295 of the Act (which are procedural) read with sub-s (2) and if so whether the legislative intent to be gathered from a reading of the section as a whole is that a meeting of creditors must *in fact be held* before it can be said that the legislative purpose of the section has been fulfilled.

The essential requirements of the notice summoning a meeting of the creditors under s 295(1) of the Act is to '*draw the attention* of the creditors to *the right* conferred upon them by sub-s (2)'. The right is that they *may* '*appoint some other person to be the liquidator* for the purpose of winding up the affairs and distributing the assets of the company *instead of the liquidator appointed by the company*'. (Emphasis is added to highlight the essential requirements.)

As I read s 295(1) of the Act no particular form of notice is required. All that is required by the section in my

view is that the notice must *draw attention* to the creditors' right of appointing their own liquidator, a right which is conferred upon them by sub-s (2).

Pennington's Company Law (5th Ed) at pp 701-702 dealing with the 'contents of notice' says this:

> If the meeting is called to pass a special or extraordinary resolution, the notice must say so, and the proposed resolution must be set out verbatim, or at least the variation between the terms of the notice and the terms of the resolution proposed at the meeting must be purely formal or grammatical, and there must be no variation of substance or effect, however slight. It would also seem necessary to set out verbatim an ordinary resolution of which special notice is required, and it is certainly necessary to do so when a resolution has been put on the agenda of an annual general meeting on the requisition of the appropriate fraction of shareholders; but it may well be that formal or grammatical variations in the resolution actually proposed at the meeting will not make a notice inadequate in the same way as such variations do not invalidate notices of special or extraordinary resolutions. Resolutions for the approval of a proposed alteration of the rights of a class of members must also be set out verbatim in the notice calling a meeting of the class; but again probably formal or grammatical variations in the resolution proposed at the meeting are permissible.
>
> Apart from these special points and any supplementary provisions in the company's articles, it suffices that the notice calling a meeting specifies the nature of the business to the transacted at the meeting in sufficient detail to enable members to decide whether they should attend the meeting to protect their interests. ... Each case must, of course, be decided on its own facts, but the guiding principle is that the notice must be sufficiently detailed to enable a member who knows nothing of the matter to decide whether he need attend the meeting, or whether he can safely let the resolution be passed without further inquiry.

Item 3 of the agenda of the notice to the creditors dated 27 October 1989 reads as follows:

> To appoint a liquidator for the purpose of winding up the affairs of the company as a creditors' voluntary liquidation, pursuant to the rights of the creditors under section 295(2) of the Companies Act (Cap 50).

The question is whether the wording sufficiently draws attention to the creditors' right to appoint a liquidator instead of the liquidators appointed by the company. In my view it does. The wording draws attention (a) to the appointment of a liquidator (b) for the purposes of winding up the company as a creditors' voluntary liquidation and (c) that this is pursuant to the right of the creditors under s 295(2) of the Companies Act. Thus in my view it is sufficiently explicit that if a creditor wants to exercise his right then he must attend the meeting summoned by the notice.

I am fortified in this view from the observations of Uthwatt J in *Choppington Collieries Ltd* v *Johnson & Ors*[1] at p 763 (approved by the Court of Appeal) when dealing with a notice of a meeting 'to elect directors' he said:

> I quite agree with what has been put forward by counsel for the defendants as to the principle upon which one should construe this notice, namely, that you should regard it as a business document and give it a fair business construction.

Later in his judgment he said:

> ... reading that notice and trying to read it as an ordinary man — a task which I find exceedingly easy — I should have thought that the one thing brought prominently to my attention was the idea of appointing more directors than one.

I too would read the whole of the liquidators' notice to the creditors dated 27 October 1989 and in particular item 3 of the agenda as a business document and I too would say that it was brought prominently to my attention that the liquidators were drawing to my attention my right of appointing a liquidator for the purpose of winding up the affairs of the company as a creditors' voluntary liquidation. The section does not require the liquidators to do anything more than that.

Accordingly I found the liquidators' notice dated 27 October 1989 to have complied with the requirements of s 295(1) of the Act read with sub-s (2) in every particular. In the event I do not find it necessary to deal with the several alternative arguments canvassed by counsel by invoking other sections of the Act and would particularly refrain from doing so as their applicability in other contexts could well arise for judicial consideration later.

I now turn to a consideration of the second point to be addressed, namely, whether the legislative intent to be gathered from a reading of s 295 of the Act is that a meeting of creditors must *in fact be held* before it can be said that the legislative purpose of the section has been fulfilled.

The words used in s 295 relative to a 'meeting' are 'summon' in sub-s (1)', 'summoned' in sub-s (2); 'held' in sub-s (4) and 'convened' in sub-s (5). These will now be examined in the context in which they are respectively used.

Clearly in sub-s (1), the word 'summon' in the context in which it is used — 'he shall forthwith summon a meeting of creditors' can but only have been used in its natural and ordinary meaning of 'to call'. Before leaving sub-s (1), it is pertinent to note that the words following, namely, 'and lay before the meeting a statement of the assets and liabilities ...' envisages a meeting being held in fact. However, no further mention is made of this requirement or what follows in the event of a failure or an inability to comply with this requirement. Thus no assistance is afforded in answering the question addressed.

Subsection (2) which spells out the right conferred on the creditors uses the word 'summoned' in the context of 'at the meeting summoned under sub-s (1)', that is to say the meeting 'called' under sub-s (1). It seems clear that the obligation of the liquidators up to this point is only to 'summon', that is to say 'call' a meeting of creditors.

Subsections (3) and (4) apply in circumstances where the meeting 'summoned' under sub-s (1) has in fact been 'held'. However the words '... after a meeting held pursuant to sub-s (1)' in sub-s (4) are disconcerting, as, as already observed except for the implication of a meeting being held by the use of the words 'and lay before the meeting' in sub-s (1) to hold a meeting as opposed to summoning a meeting. Further as already observed sub-s (4) is a penal provision for failure to submit a return following a meeting of creditors and as such can apply only in the event a meeting of creditors is in fact held.

The word used in sub-s (5) is 'convened' and it is used in the context of 'the liquidator has 'convened' a meeting under sub-s (1)'.

The distinction between 'summon' and 'convene' is well illustrated in *Stroud's Judicial Dictionary* at p 549 as follows:

> There is an obvious difference between 'convened' and 'summoned' ... 'convened' is applied, properly, not to individuals but, to aggregate bodies. A Board is 'convened'; an assembly is 'convened'; a senate is 'convened' but A is not 'convened', he is 'summoned, warned, or noticed' ...

Thus the words 'summon' in sub-s (1) and 'convened' in sub-s (5) have been used in their natural and ordinary meaning in that in sub-s (1) the creditors are 'summoned' to attend a meeting and in sub-s (5) the creditors' meeting is 'convened'. These two words are contra-distinguished with 'held' also used in its natural and ordinary meaning in the Act as can clearly be seen from s 176(3) where the following phrase appears:

> ... but any meeting so *convened* shall not be *held* after the expiration of 3 months from that date. (Emphasis added.)

I have little doubt that the words 'summon', 'convened' and 'held' used in s 295 are used in their natural and ordinary meanings and that the legislative intent is that once a proper notice complying in every particular with sub-s (1) read with sub-s (2) is properly served on the creditors, the provisions of the section are complied with whether or not a meeting is in fact held.

Accordingly, the applicants were entitled to the order sought that the winding-up of the company (in members' voluntary liquidation) proceed as if the winding-up were a creditors' voluntary winding-up and I so ordered. To have held otherwise would in my view have frustrated the legislative purpose and stalemated the liquidation of the company. It would not have been in the public interest generally or in the interest of the creditors of this company particularly. The consequential orders I made speak for themselves and do not call for comment.

The only apprehension I had was the failure of the liquidators to send out fresh notices when not a single creditor attended the meeting convened for 10 November 1989. However this is a procedural irregularity and not likely to cause or have caused any substantial injustice to anyone in the circumstances and so I proceeded to make the orders I did.

Order accordingly.

Solicitors: *Colin Ng & Partners.*

Reported by *Terence Tan Bian Chye*

Goh Cheng Chuan v Public Prosecutor

HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL NO 38 OF 1988
THEAN J
27 JULY 1990

Criminal Procedure — Discharge amounting to an acquittal — Court's discretion to grant discharge — How discretion should be exercised — Criminal Procedure Code (Cap 68, 1985 Ed), ss 180 & 184

Criminal Procedure — Public Prosecutor, role of — Initiating and continuing a charge — Criminal Procedure Code (Cap 68, 1985 Ed), ss 184(2) & 335(1) — Constitution of the Republic of Singapore, art 35(8)

Words and Phrases — 'Unless the court so directs' — Criminal Procedure Code (Cap 68, 1985 Ed), s 184(2)

The accused faced two charges. The charges were mentioned in the subordinate courts on several occasions before finally being set down for trial on 21 April 1986. On this day, the prosecution proceeded on one of the charges. The accused was acquitted of this charge. The second charge was set down for mention on 21 May 1986. On that day the prosecution asked for an adjournment of six months as a material witness was not available. On the next mention day the prosecution asked for a further adjournment of three months for the same reason. This was granted. The case came up for mention on 2 February 1987. The prosecution asked for a discharge not amounting to an acquittal under s 184 as steps were being taken to trace the missing witness and that the prosecution had every intention of proceeding with the charge. One of the complainants had since passed away. The defence argued that the court had a discretion to direct a discharge amounting to an acquittal and should do so in this case. The court ruled that it had no discretion in the matter and was bound to order as requested by the prosecution. The accused appealed.

Held, allowing the appeal:

(1) Section 184 of the Criminal Procedure Code (Cap 68, 1985 Ed) only comes into effect if the prosecution decides not to further prosecute the accused.

(2) In ordinary cases the order of discharge under s 184 does not amount to an acquittal, but this is not because of any intention on the part of the prosecution but because of the wording of the section.